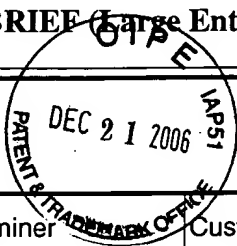


*Hejw*

**TRANSMITTAL OF APPEAL BRIEF (Large Entity)**

Docket No.  
ITL.0083US

In Re Application Of: **Ramanathan Ramanathan**



Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/138,807	August 21, 1998	Jason P. Salce	21906	2623	4545

Invention: **Confirming Video Transmissions**

COMMISSIONER FOR PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:  
**October 16, 2006**

The fee for filing this Appeal Brief is: **\$500.00**

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Dated: **December 18, 2006**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:  
Ramanathan Ramanathan  
Serial No.: 09/138,807  
Filed: August 21, 1998  
For: Confirming Video Transmissions  
Cust. No.: 21906

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§ Examiner: Jason P. Salce  
§  
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§ Assignee: Intel Corporation  
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§ Conf. No.: 4545  
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**APPEAL BRIEF**

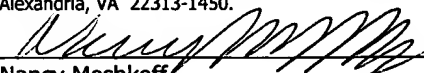
12/22/2006 AWONDAF1 00000065 09138807

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Nancy Meshkoff

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**REAL PARTY IN INTEREST**

The real party in interest is the assignee Intel Corporation.

**RELATED APPEALS AND INTERFERENCES**

None.

## **STATUS OF CLAIMS**

Claims 1-11 (Canceled).

Claims 12-18 (Rejected).

Claim 19 (Canceled).

Claims 20-23 (Rejected).

Claim 24 (Canceled).

Claims 25-43 (Rejected).

Claim 44 (Canceled).

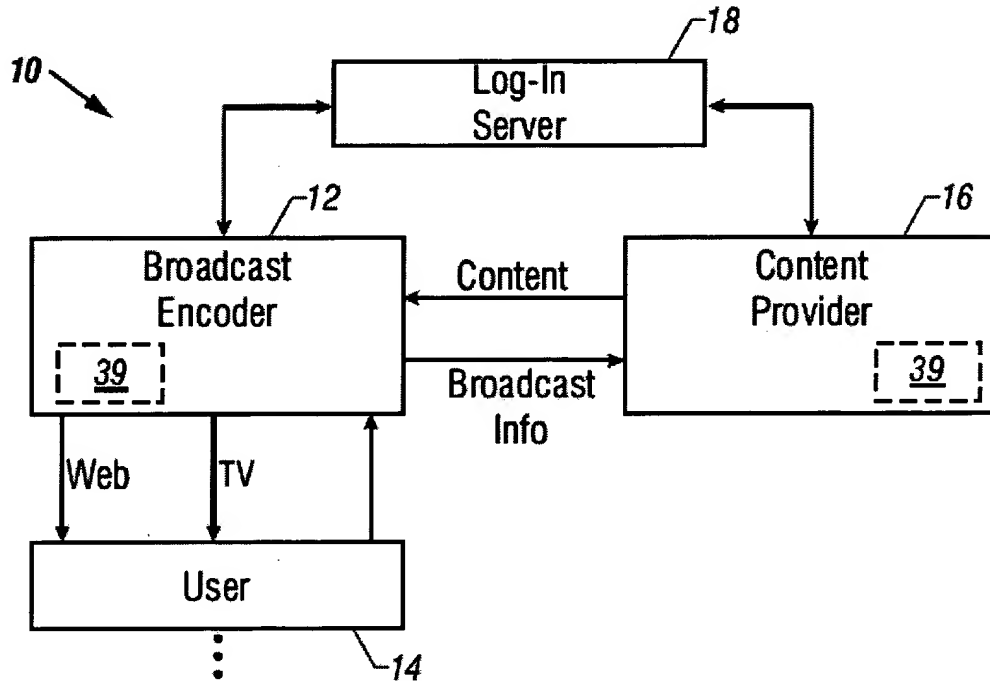
Claims 12-18, 20-23, and 25-43 are rejected and are the subject of this Appeal Brief.

## **STATUS OF AMENDMENTS**

All amendments have been entered.

## SUMMARY OF CLAIMED SUBJECT MATTER

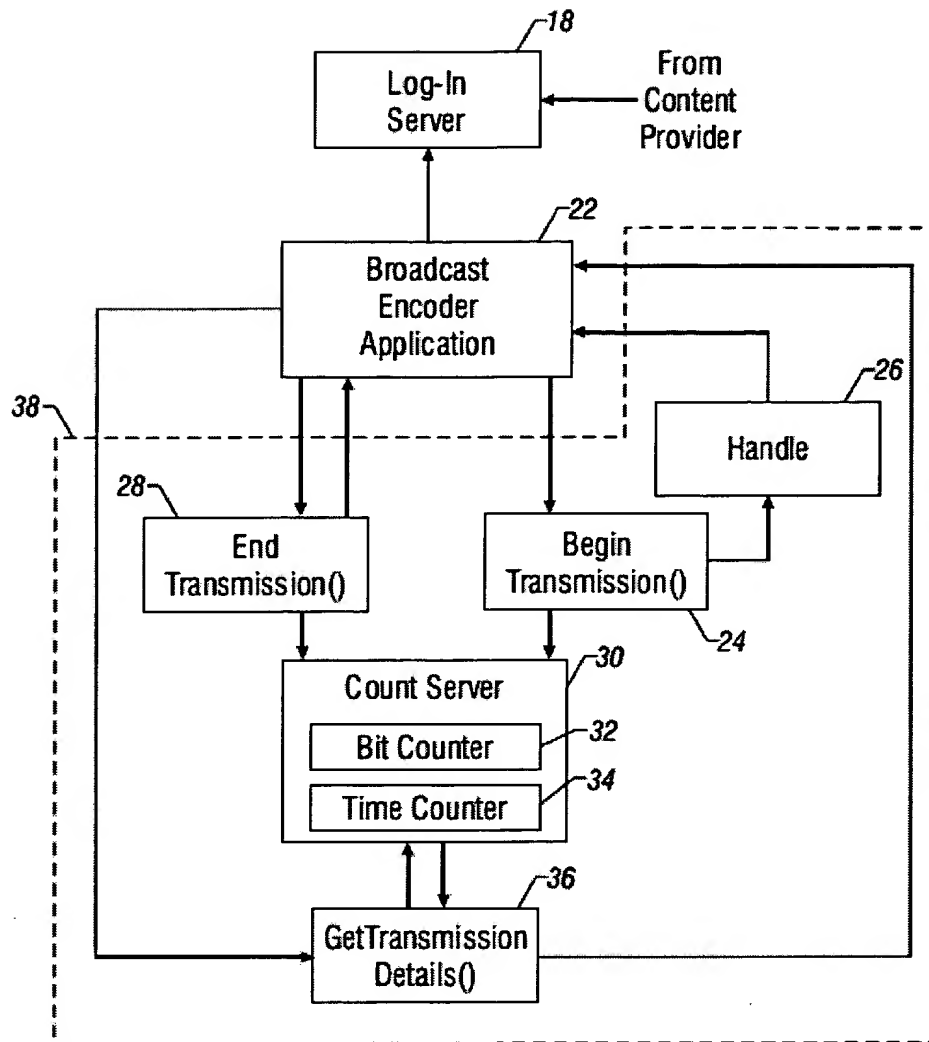
In the following discussion, the independent claims are read on one of many possible embodiments without limiting the claims:



**FIG. 1**

12. A transmission system comprising:
- an encoder that combines different transmissions to distribute to a plurality of receivers (Figure 1, blocks 12, 14; specification at page 3, lines 13-16);
  - a device that sets a first marker in the transmission (Figure 1, blocks 12 and 16; specification at page 5, lines 11-14); and
  - a counter to track the transmission from the time a handle to the first marker is obtained, said handle to enable said first marker for tracking (Figure 2, blocks 30, 36, 24, 26; Figure 3, blocks 44 and 46; specification at page 4, line 19-page 5, line 17; page 6, line 29-page 7, line 2).





**FIG. 2**

14. The system of claim 13 wherein said broadcast encoder sets the first marker in a video transmission (Figure 1 at 12; specification at page 5, lines 11-14).

16. An article comprising a medium for storing instructions that cause a computer to:  
set a first marker in a transmission (Figure 1, blocks 12 and 16; specification at page 5, lines 11-14);

call one method to provide a handle to said first marker (Figure 2, blocks 24 and 26; Figure 3, blocks 42 and 44; specification at page 4, lines 7-22);

in response to providing said handle, track the on-going transmission from said first marker (Figure 2, block 30; Figure 3A, blocks 44 and 46; specification at page 6, line 23- page 7, line 2); and

at any time after said handle is provided, call a method other than said one method, said other method to obtain tracking information relative to said first marker without terminating said tracking from said first marker, said tracking information current as of the time said other method is called (Figure 2, block 36; Figure 3, blocks 50 and 52, diamond 48; specification at page 4, line 23-page 5, line 17, page 7, lines 2-5).

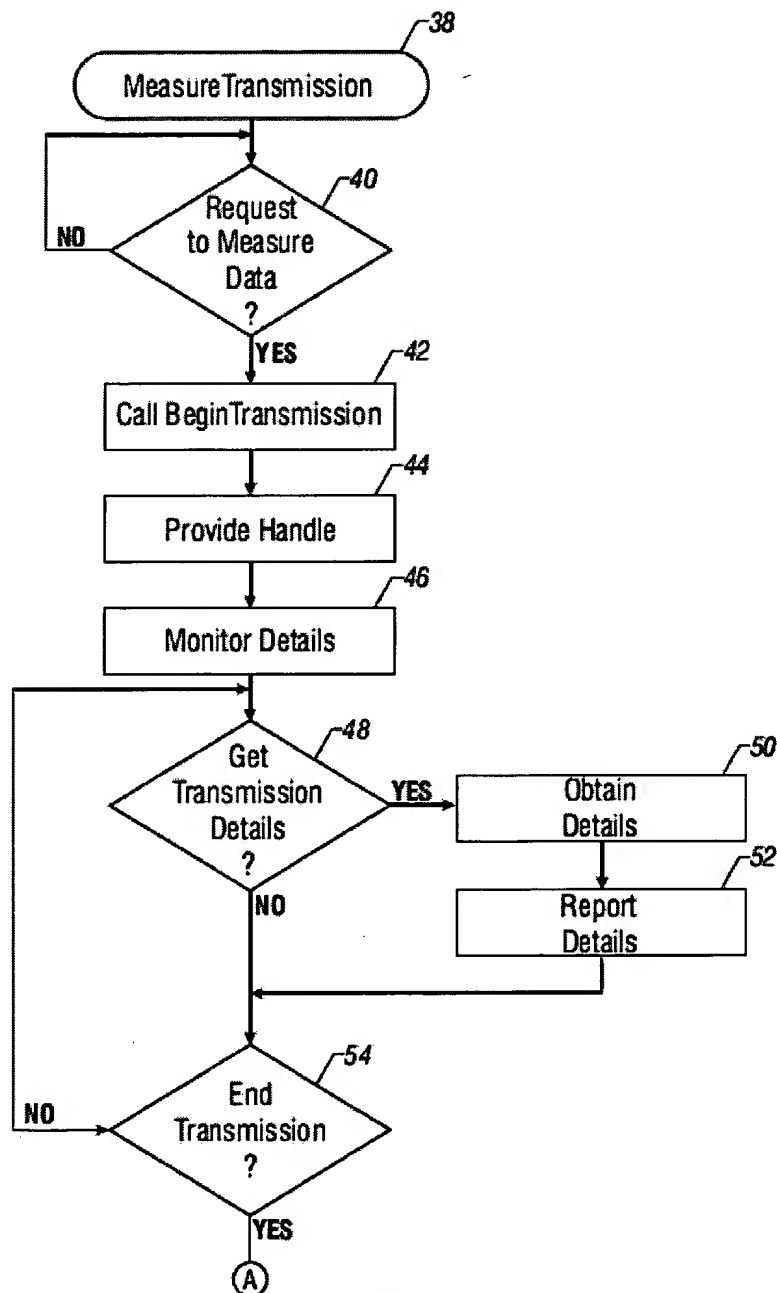


FIG. 3A

17. The article of claim 16 including instructions that cause the computer to receive web content transmissions and accompanying television broadcasts from a content provider (Figure 1, at 12, 16; specification at page 3, lines 13-17).

18. The article of claim 17 including instructions that cause the computer to receive a web content broadcast with the first marker inserted within the broadcast data, combine the web content broadcast with a television broadcast and transmit the combined broadcast (Figure 1 at 12, 16; specification at page 3, lines 13-17, page 5, lines 11-14).

21. The article of claim 20 including instructions that cause a computer to provide a continuous data stream, set said first marker and a second marker in said stream, and associate said second marker with a second handle (Figure 2 at 22, 24, 26; specification at page 5, lines 11-17, page 6, lines 6-22).

23. The article of claim 21 including instructions that cause a computer to allow said first and second markers to be accessed separately using separate handles so that transmission details associated with different portions of a data transmission can be obtained (Figure 2 at 22, 24, 26; specification at page 5, lines 11-17, page 6, lines 6-22).

26. A method comprising:  
receiving a handle to a first marker that is set in a transmission, said transmission to be distributed to a plurality of receivers (Figure 1, blocks 12 and 14; Figure 2, blocks 24 and 26; Figure 3, blocks 42 and 44; specification at page 4, lines 7-22); and  
tracking the transmission after said first marker, said tracking on-going from the time said handle to said first marker is received (Figure 2, block 30; Figure 3A, blocks 44 and 46; specification at page 6, line 23-page 7, line 2).

27. The method of claim 26 wherein on-going tracking includes counting bits transmitted and elapsed time from the time when the first marker is transmitted (Figure 2 at 30, 32, 34; specification at page 5, lines 1-8, page 6, line 29-page 7, line 2).

30. The method of claim 28 including receiving web broadcast content from a content provider, combining the web broadcast content with television programming at a broadcast encoder and inserting said first marker at the broadcast encoder (Figure 1 at 12 and 16; specification at page 3, lines 13-17, page 5, lines 11-14).

35. The method of claim 26 including providing a log-in server, reporting a transmission to said log-in server and allowing a third party to access said log-in server to receive transmission reporting (Figure 1 at 18; specification at page 3, lines 19-25).

36. A method for tracking video transmissions comprising:

~ setting a first marker in a transmission having video content (Figure 1, blocks 12 and 16; specification at page 5, lines 11-14);

invoking a first method to provide a handle to said first marker (Figure 2, blocks 24 and 26; Figure 3, blocks 42 and 44; specification at page 4, lines 7-22); and

in response to providing said handle, tracking the transmission from the time the handle to the first marker is provided until a time a second method other than said first method is invoked, said second method to obtain current transmission details while said tracking from said first marker continues without interruption, said second method invocable at any time to provide details relative to said first marker (Figure 2, blocks 30, 36; Figure 3, blocks 44, 46, and 50 and diamond 48; specification at page 4, line 23-page 5, line 17, and page 6, line 23-page 7, line 5) (Figure 3, blocks 50 and 52).

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

- A. Whether claims 12-18, 20-23, 25-34, and 36-42 are anticipated under 35 U.S.C. § 102(e) by Kenner (U.S. Patent No. 5,956,716).**
  
- B. Whether claims 35 and 43 are unpatentable under 35 U.S.C. § 103(a) over Kenner in view of Echeita (U.S. Patent No. 5,826,165).**

## ARGUMENT

### A. Are claims 12-18, 20-23, 25-34, and 36-42 anticipated under 35 U.S.C. § 102(e) by Kenner (U.S. Patent No. 5,956,716)?

#### 1. Claims 12, 13, and 15

Independent claim 12 was rejected under 35 U.S.C. § 102(e) as being anticipated by Kenner. Claim 12 recites a counter *to track a transmission from the time a handle to a first marker is obtained*, the handle to enable the first marker for tracking. It is respectfully submitted that Kenner does not anticipate claim 12.

According to some embodiments of the present invention, in any given data transmission, a number of markers may be placed in the data flow. Specification, page 5, lines 11-14. The markers, however, are not associated with the data flow directly. Specification at page 6, lines 6-13. Thus, the use of the markers can be extended to measure any event occurring in the system at any level of granularity. *Id.* Random events that may happen in the system may be monitored using markers that exist within the system as independent entities. *Id.* As a marker is enabled, it becomes a measurement of an event which may be used to confirm, measure, and log necessary information related to that event. *Id.*

A handle provides a pointer to a marker within a broadcast data stream. Specification, page 4, lines 21-22. Once a handle has been provided, the transmission details may be culminated by a count server. Specification at page 6, line 29-page 7, line 2. The count server can include a bit counter and a time counter to count transmitted bits and elapsed time respectively. Specification, page 5, lines 1-3.

In the Office action, the examiner identifies Kenner's (SRU Access Count Rate) as disclosing the claimed counter and a [Video ID] and data structure as disclosing the claimed first marker and handle respectively. Paper No. 20060707, page 5. It is respectfully submitted that Kenner's (SRU Access Count Rate) does not track the transmission of a video clip from the time a data structure is created.

Generally, Kenner stores video clips on a plurality of storage and retrieval units (SRUs). Column 11, lines 25-31. Index managers such as primary index managers (PIMs) are the primary database management modules, each PIM manages particular SRUs. *See, e.g.,* Fig. 1;

column 10, lines 10-12. A PIM may create a data sequencing interface (DSI) to facilitate data transfer from an SRU to a user's terminal. Column 12, lines 5-7. A DSI is created and/or initialized whenever a user requests audio visual information that is not stored locally. Preferably, a DSI is created just prior to video data download and is destroyed immediately thereafter. Column 12, lines 14-18. Thus, DSIs are transient. *See, e.g.*, Table 1 (the DSI does not have any database partitions), column 20, lines 45 and 53, column 21, line 9.

Index managers have several software modules and database partitions. *See* Table 1. *See also* columns 13-15. If one database is related to another, the relating field is set off by square brackets [ ]. Column 13, lines 15-20. One database maintained by a PIM is the SRU list. The structure of this database is: (SRU address), (SRU Under-run Count Rate), (SRU Access Count Rate). Column 13, lines 55-67. The (SRU address) identifies the network location of a particular SRU. Column 14, lines 10-12. The (SRU Under-run Count Rate) and (SRU Access Count Rate) both monitor SRUs over a predetermined time interval. For example, the (SRU Under-run Count Rate) tracks the number of times that an SRU was not able to fulfill a data request and the (SRU Access Count Rate) monitors how often a particular SRU is used for video delivery. Column 13, lines 55-67. Notably, the SRU list does not relate to any other database as none of the fields are enclosed by square brackets. Specifically, the SRU list does not have a [Video ID] field, which is a unique reference identifier for a video clip. Column 14, lines 8-10.

Once a PIM creates a DSI for a particular user terminal, the PIM communicates instructions to the DSI so that the DSI can collect the requested video information. Column 12, lines 59-64. Namely, the PIM transmits a data structure to the DSI that identifies the requested video clip, and the exact location of the video clip. Column 15, lines 35-40. The data structure includes the following fields: [Video ID], (IM Address), (SRU Address), (Location Code), (SRU Access Count Rate), (SRU Under-run Count Rate). The [Video ID], (SRU Access Count Rate), and (SRU Under-run Count Rate) were explained above. The (IM Address) helps locate the appropriate remote IM (index manager) within the network and the (Location Code) identifies the exact physical location of the video clip within the identified SRU. Column 14, lines 8-14, column 13, lines 43-44. Thus, for each video clip to be retrieved, an SRU storing the clip is identified together with the physical location of the video clip on that SRU. Furthermore, the (SRU Access Count Rate) and (SRU Under-run Count Rate) for the particular SRU are also provided. Notably, when the data structure is created the video clip is in storage and the count

rate fields indicate the number of times the particular SRU has not been able to fulfill a data request and how often the particular SRU has been used for video delivery, both for a predetermined time interval.

Because each video segment corresponding to a [Video ID] may have multiple storage locations, the data download structure may have multiple records for the separate storage locations for that video segment. Column 15, lines 47-56. It is respectfully submitted that each record in the multiple records would at least have the (SRU address), (Location Code), (SRU Access Count Rate), and (SRU Under-run Count Rate) fields for each SRU storing the video clip. Thus, the DSI knows the locations of the SRUs storing the requested information and the exact location of storage within each SRU.

Once the DSI has the needed information, the DSI queries a particular SRU, communicating the exact video clip location to the SRU. Column 16, lines 42-61. If the SRU cannot respond to the DSI's command because it is busy downloading a clip to fulfill another request, then the DSI will retrieve the requested video from another location. Column 15, lines 47-56. Namely, the DSI may use an alternate video address to attempt to retrieve the requested video clip from another SRU. Column 16, lines 44-65. If the queried SRU fails to deliver the requested video clip, the DSI increments the (SRU Under-run Count Rate) for that SRU. Column 16, line 62-column 7, line 5. If, however, a queried SRU downloads the requested data, the DSI updates the (SRU Access Count Rate). Column 16, lines 57-59. The DSI reports the status of each queried SRU to the PIM, namely whether the (SRU Access Counter) was updated or the (SRU Under-run Counter) for the SRU was incremented. Column 12, lines 59-64; column 16, line 55-column 17, line 11.

Kenner does not state that the DSI's report to the PIM regarding the (SRU Access Count Rate) or (SRU Under-run Count Rate) includes the identifier for that particular video clip. In fact, the database that this information is communicated to does not associate the count rates for each SRU with a particular video clip. Thus, the (SRU Access Count Rate) merely monitors how often during a predetermined time interval that *a particular SRU is used* for video delivery in general without regard to a particular video clip. See column 13, lines 55-65. Thus, the (SRU Access Count Rate) does not track the video clip proper.

Moreover, because a particular (SRU Count Rate) is not incremented until a time after the data structure is created, after a particular SRU is queried and successfully downloads a clip,



Kenner does not start counting at the time the data structure is created. The examiner asserts that claim 12 only states *from a time (any time)* that the data structure counter field is created. Paper No. 20060707. This is not so, the claim recites from *the time* a handle to the first marker is *obtained*. “The time” indicates a particular time, which in this case is when the handle is *obtained*. As is explained above, any alleged tracking (counting) by a counter does not begin from the time the data structure is created—the (SRU Access Count Rate) is updated *after* successful video clip delivery.

For at least these reasons, Kenner does not anticipate. Reversal of the rejections is requested.

## **2. Claim 14**

Claim 14 depends indirectly from claim 12 and calls for the broadcast encoder to set the first marker in a video transmission.

In the Office action, the examiner asserts that the [Video ID] reads on a first marker. In Kenner, only the content provider uses a software tool to assign a video ID. Kenner, column 27, line 64-column 28, line 45. The video ID assigned by the content provider is known to the system shown in Figure 4 at the time the video clip is made available to that system. Column 23, lines 55-65 and column 27, lines 64-65. That is, after the software tool assigns the unique video ID for a particular clip, the clip is uploaded to the web server 83. *Id.* Thus, the video ID is only known after the clip is uploaded to the server. As only the content provider uses the software tool to assign a video ID, the broadcast encoder does not set the video ID. Stated another way, there is only one way to assign a video ID in Kenner and that is using a software tool. The software tool is not used by both a broadcast encoder and a content provider; it is only used by the content provider. Thus, Kenner does not anticipate claim 14. Reversal of the rejection is requested.

## **3. Claims 16, 20, and 25**

Independent claim 16 was also rejected under 35 U.S.C. § 102(e) as being anticipated by Kenner. According to the first paragraph of claim 16, a first marker is set in a transmission. In the second paragraph of claim 16, one method is called to provide a handle to the first marker. In response to providing the handle, the ongoing transmission is tracked from the first marker. The fourth paragraph of claim 16 recites at any time after the handle is provided, call a method other than the one method, the other method to obtain tracking information relative to the first marker

without terminating the tracking from the first marker, the tracking information current as of the time the other method is called.

In some embodiments, once a handle has been provided to a marker, details about the ongoing transmission can be monitored for as long as is desired. *See, e.g.*, Figs. 2 and 3A. *See also* specification at page 4, lines 19-20; page 6, line 29-page 7, line 2. Whenever the details about the transmission are desired, details may be provided that are current up to the point when a request was made. *Id.* *See also* specification, page 5, lines 1-17; page 7, lines 2-5. The details may be provided and monitoring, from the handle, may continue. At a minimum, Kenner does not track an ongoing transmission from a first marker in response to providing a handle, nor does he obtain tracking information relative to the first marker without terminating the handle.

In the Office action, the examiner asserts that Kenner's video ID reads on a first marker in a video clip and a data structure reads on a handle to the first marker; thus, the method for creating the data structure reads on the claimed one method. Paper No. 20060707, page 6. As is explained above in section A.1. of this Brief, video clips are stored on SRUs. The video clip remains in storage until an SRU is queried that can deliver the video clip. Column 16, lines 50-59. Thus, the video is not continuously transmitted when the data structure is first created. For this reason alone, Kenner does not anticipate.

Likewise, Kenner does not disclose calling a method that is different from the method that provides the data structure at any time after the data structure is provided without terminating the data structure. In the Office action, the examiner identifies "using the access rate data" as disclosing a second process. Paper No. 20060707, pages 6-7. And that the process obtains tracking information relative to the first marker without terminating the tracking from the first marker. *Id.* It is respectfully submitted that using (Access Rate) data does not read on claim 16.

For example, the examiner asserts that tracking in Kenner is read on by updating Kenner's data structure. Paper No. 20060707, page 6. Thus, per the explanation of Kenner's data structure given above in section A.1. of this Brief, tracking is the incrementing of either count rate depending upon if a particular queried SRU can or cannot deliver the requested video clip. Once the video clip is retrieved from a particular SRU, the SRU access counter for that SRU is updated and this information is transmitted to the PIM. Column 16, lines 42-62, column

14, lines 50-62, column 12, lines 56-64. Thus, the alleged tracking using the data structure for that request is terminated after video clip download. Column 12, lines 5-18.

That tracking is terminated using the data structure associated with a particular request is supported by the fact that DSIs are request unique and transient. This is also explained above in section A.1. of this Brief. The examiner asserts, however, that the DSI tracks continuously and is not destroyed. Paper No. 20060707, page 3. This assertion is traversed.

As is demonstrated above, the DSI is transient. Column 12, lines 5-18; column 20 at lines 45 and 53; column 21, line 9. Furthermore, as is shown in Table 1, the DSI does not have any database partitions. Surely if the DSI was not transient Kenner would have shown a DSI database. Furthermore, Kenner is clear that the DSI 30 is created or initiated when necessitated by the user's query. Column 10, lines 25-32; column 12, lines 14-16. The DSI 30 is terminal unique. Column 11, lines 45-50. Thus, the DSI is both terminal and query specific. This is apparent from the data structure passed to the DSI, which identifies only those video clips that the given user requested. Column 15, lines 35-55; column 16, lines 39-61. Thus, after the information is obtained from an SRU that particular data structure is no longer needed. Accordingly, it is submitted that if the DSI is not destroyed after download, it is at least deactivated so that it can be initialized after another user request necessitates it. *See, e.g.*, column 12, lines 4-18. Interestingly, the examiner agrees that if the DSI is destroyed, Kenner would not teach continuous tracking. Paper No. 20060707, page 3. As the DSI 30 is destroyed (or deactivated) the examiner has not established *prima facie* anticipation. In other words, because the DSI, hence the data structure, is destroyed post download, the alleged tracking by that DSI's data structure is terminated, which is contrary to the claim.

Additionally, because access rate data is only updated after a DSI has successfully collected data from a particular SRU the data is only current immediately after download. If the data is used during the query stage of a DSI's retrieval, the data will not reflect a download that is in progress. Thus, the information would not be current.

In the Office action, the examiner cites to two specific embodiments of Kenner, Figure 1 and Figure 4. It is respectfully submitted that these embodiments differ and therefore the rejection fails. For example, the examiner asserts that the data structure reads on the claimed handle and using the access rate data reads on the second software process. Paper No. 20060707, pages 6-7. Notably, many of the fields relied on by the examiner in the data structure

and the audio-visual access list are not present in the databases of Figure 4 (Example 7). *See* column 21, line 50-column 22, line 62. Moreover, a reference to the “data structure” could not be found in the discussion of the second embodiment (Figure 4). As the first embodiment of Kenner (Figure 1) does not describe the invention as arranged in the claim, Kenner does not anticipate. Reversal of the rejection is requested.

#### **4. Claims 17 and 28**

Claim 17 depends from claim 16 and recites the computer to receive web content transmissions and accompanying television broadcasts from a content provider. The examiner asserts that the content provider provides television broadcasts. *See* Paper No. 20060707, page 7. However, there is nothing in Kenner that specifies that the video clips are television broadcasts. For example, all that Kenner states is that the content provider makes video clips available to the system shown in Figure 4. *See* column 27, lines 64-66. Because Kenner does not disclose that video clips are television *broadcasts*, Kenner does not anticipate.

#### **5. Claims 18, 29, and 41**

Claim 18 depends from claim 17 and recites receive a web content broadcast with the first marker inserted within the broadcast data, combine the web content broadcast with a television broadcast, and transmit the combined broadcast. As explained above with respect to claim 17, Kenner does not specifically disclose television broadcasts. Furthermore, as the examiner asserts that the first marker is the video ID assigned to the particular video clip, it is respectfully submitted that the video clip is web content per the examiner’s analysis. Thus, Kenner does not teach combining web content broadcast with a television broadcast and transmit the combined broadcast. Kenner does not anticipate.

#### **6. Claims 21 and 22**

Claim 21 depends indirectly from claim 16 and recites a computer to provide a continuous data stream, set a first marker and a second marker in the stream, and associate the second marker with a second handle.

In the Office action, the examiner asserts that a segmented video clip reads on a continuous data stream and that index information reads on the second marker whereas the location for the segment to be stored in a database reads on the second handle. Paper No. 20060707, page 8. It is respectfully submitted that the stored segmented video clips do not constitute a continuous data stream.

For example, according to claim 21, a first and a second marker are set in a *continuous* stream and a handle is associated with the second marker. But the examiner's objection relies on a so-called handle that points to a stored clip or segment. Because the clip is in storage, it is not streaming. Thus, the alleged second handle does not point to a marker in a stream. Reversal of the rejection of claims 21 and 22 is requested.

#### **7. Claims 23, 34, and 40**

Claim 23 depends indirectly from claim 21 and recites cause a computer to allow the first and second markers to be accessed separately using separate handles so the transmission details associated with different portions of a data transmission can be obtained.

In the rejection of claim 21, the examiner asserts that all the clip segments contain video IDs and index information which are the first and second markers. Paper No. 20060707, page 8. If each segment includes *both* the video ID and index information, then it is respectfully submitted that the two alleged markers are not accessed separately. That is, if the handle to the index information is the location where the segment is stored, and the video ID and index information are all contained in the segment, then if the segment is accessed, both the video ID and the index information are accessed. Furthermore, merely accessing a clip from storage alone does not provide details about the downloading of a clip segment to a user terminal. Reversal of the rejection is requested.

#### **8. Claims 26 and 31-33**

Claim 26 is an independent claim that recites receiving a handle to a first marker that is set in a transmission, the transmission to be distributed to a plurality of receivers, and tracking the transmission after the first marker, the tracking ongoing from the time the handle to the first marker is received.

To reject claim 26, the examiner refers to the rejection of claim 16. To reject claim 16, the examiner identified the video ID as reading on the first marker, the data structure as reading on the handle, and updating the data structure as reading on the tracking. Paper No. 20060707, pages 6-7. The data structure described by Kenner in association with Fig. 1 includes the following fields: [Video ID], (IM Address), (SRU Address), (Location Code), (SRU Access Count Rate), and (SRU Under-run Count Rate). In this data structure, the only fields being updated by the DSI 30 are the (SRU Access Count Rate) and the (SRU Under-run Count Rate). These count rates are only updated after an SRU is queried. For example, the (SRU Under-run

Count Rate) is incremented if a queried SRU cannot deliver the requested video clip and the (SRU Access Count Rate) is updated if the queried SRU does deliver the video clip. Column 16, line 42-column 17, line 22. Therefore, any alleged counting within this data structure is not ongoing from the time the data structure is created. Stated another way, a count rate is only incremented after an SRU is queried. Furthermore, as was previously explained in prior sections of this Brief, the SRU list database does not include a [Video ID] field, therefore the (SRU Access Count Rate) and (SRU Under-run Count Rate) are not used by the PIM in association with a particular video clip. Because this information is dissociated from a particular video clip, it is respectfully submitted that these count rates do not track a particular transmission but rather track the demand on the SRUs. *See, e.g.*, column 16, line 50-column 17, line 34.

For at least these reasons, reversal of the rejection of claims 26 and 31-33 is requested.

#### **9. Claim 27**

Claim 27 depends from claim 26 and recites wherein the ongoing tracking includes counting bits transmitted and elapsed time from the time when the first marker is transmitted. To reject claim 27, the examiner combines two different embodiments of Kenner. Namely, to reject claim 26, the examiner relies primarily on the embodiment of Kenner shown in Fig. 1, whereas to reject claim 27, the examiner relies on the embodiment shown in Fig. 4. These two embodiments are not identical. For example, there is no indication that the data structure that the examiner relies on as disclosing the handle or the (SRU Access Count Rate) and (SRU Under-run Count Rate) are fields within the databases associated with the embodiment of Fig. 4. *See* column 21, line 50-column 22, line 63. But the examiner asserts that these count rates are what tracks a transmission, which they do not. As is explained in prior sections of this Brief, the count rates are merely incremented, therefore they do not provide information about bits transmitted or elapsed time. For this reason, reversal of the rejection is requested.

#### **10. Claim 30 and 42**

Claim 30 indirectly depends from claim 26. Claim 30 recites receiving web broadcast content from a content provider, combining the web broadcast content with television programming at a broadcast encoder and inserting the first marker at the broadcast encoder.

As is discussed in section A.2. of this Brief, the broadcast encoder does not assign a video ID to a video clip; the video ID is assigned by the content provider. Furthermore, as is

discussed in sections A.4. and A.5., Kenner does not disclose television broadcasts. For these same reasons, claim 30 is not anticipated. Reversal of the rejection is requested.

### **11. Claims 36-39**

Independent claim 36 recites setting a first marker in a transmission having video content, invoking a first method to provide a handle to the first marker, and in response to providing the handle, tracking the transmission from *the time* the handle to the first marker is provided until the time a second method other than the first method is invoked, the second method to obtain current transmission details while the tracking from the first marker continues without interruption, the second method invocable at any time to provide details relative to the first marker.

To reject claim 36, the examiner refers to the rejection of claim 16 where Kenner's video ID is identified as disclosing the first marker, a data structure is identified as a handle, and tracking is identified as updating the data structure. As has been previously discussed in prior sections of this Brief, the SRU count rates do not track a video clip *per se*. They are merely concerned about the load, in general, on a particular SRU. Furthermore, the count rates are only incremented *after* a period of time has passed after the data structure is created. Thus, to the extent that the count rates disclose tracking (via counting), counting does not begin when the data structure is provided.

Furthermore, in the rejection of claim 16, the examiner identifies updating the access rate data in the audio-visual access list as disclosing the second method. The audio-visual access list is only updated after a video segment has been delivered and the data structure for a particular request is terminated soon thereafter. Additionally, since the count rates for the queried SRU have been updated, counting with respect to that particular data structure ends. Thus, when data is provided to the PIM to update the audio-visual access list, the alleged tracking using that data structure has ended and the access rate update is only current after the information has been transmitted. Because the DSI is destroyed after video data download, and because the SRU access counter included in that particular data structure ceases to be incremented post successful download, the alleged tracking has been interrupted and the second method is not invocable at any time. For at least these reasons, Kenner does not anticipate. Reversal of the rejection is requested.

**B. Are claims 35 and 43 unpatentable under 35 U.S.C. § 103(a) over Kenner in view of Echeita (U.S. Patent No. 5,826,165)?**

**1. Claims 35 and 43**

Claim 35, which depends from claim 26, was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenner in view of Echeita. The examiner concedes that Kenner is silent about allowing a third party to access a log-in server to receive transmission reporting. Paper No. 20060707, page 11. Echeita fails to cure the deficiency of Kenner.

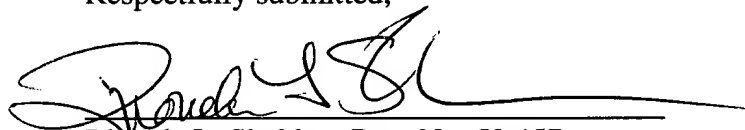
For instance, the examiner asserts that Exheita's ad agency reconciliation computer reads on the log-in server and his billing account system reads on the third party that has access to the log-in server. *See* Paper No. 20060707, page 11. The ad agency reconciliation computer 38 is shown in Fig. 1 at the first receiving station 18. The billing account system is shown in Fig. 1 at 40. Echeita states, "the unit 36 *outputs* data over a modem connection 44 to the program providers billing and accounting system 40." Column 6, lines 8-10 (emphasis added). In Fig. 1, the modem connection 44 is through the ad agency reconciliation computer 38 to the billing account system 40. Notably, the arrows in Fig. 1 are unidirectional, only showing *output* to the billing account system 40. As Echeita does not clearly disclose allowing the billing account system to access the ad agency reconciliation computer, it is respectfully submitted that claims 35 and 43 are not obvious over the combination of Kenner and Echeita. Reversal of the rejection is requested.

**Conclusion**

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

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## **CLAIMS APPENDIX**

The claims on appeal are:

12. A transmission system comprising:  
an encoder that combines different transmissions to distribute to a plurality of receivers;  
a device that sets a first marker in the transmission; and  
a counter to track the transmission from the time a handle to the first marker is obtained, said handle to enable said first marker for tracking.
13. The system of claim 12 including a content provider and a broadcast encoder coupled to said content provider.
14. The system of claim 13 wherein said broadcast encoder sets the first marker in a video transmission.
15. The system of claim 13 wherein said content provider sets the first marker in a video transmission.
16. An article comprising a medium for storing instructions that cause a computer to:  
set a first marker in a transmission;  
call one method to provide a handle to said first marker;  
in response to providing said handle, track the on-going transmission from said first marker; and  
at any time after said handle is provided, call a method other than said one method, said other method to obtain tracking information relative to said first marker without terminating said tracking from said first marker, said tracking information current as of the time said other method is called.

17. The article of claim 16 including instructions that cause the computer to receive web content transmissions and accompanying television broadcasts from a content provider.

18. The article of claim 17 including instructions that cause the computer to receive a web content broadcast with the first marker inserted within the broadcast data, combine the web content broadcast with a television broadcast and transmit the combined broadcast.

20. The article of claim 16 including instructions that cause a computer to transmit said transmission to a plurality of receivers to display on a display device.

21. The article of claim 20 including instructions that cause a computer to provide a continuous data stream, set said first marker and a second marker in said stream, and associate said second marker with a second handle.

22. The article of claim 21 including instructions that cause a computer to call a method which provides transmission details and the handle.

23. The article of claim 21 including instructions that cause a computer to allow said first and second markers to be accessed separately using separate handles so that transmission details associated with different portions of a data transmission can be obtained.

25. The article of claim 16 including instructions that cause a computer to report the transmission.

26. A method comprising:  
receiving a handle to a first marker that is set in a transmission, said transmission to be distributed to a plurality of receivers; and  
tracking the transmission after said first marker, said tracking on-going from the time said handle to said first marker is received.

27. The method of claim 26 wherein on-going tracking includes counting bits transmitted and elapsed time from the time when the first marker is transmitted.

28. The method of claim 26 including receiving web content transmissions and accompanying television broadcasts from a content provider.

29. The method of claim 28 including receiving a web content broadcast with said first marker inserted within the broadcast, combining the web content broadcast with a television broadcast and transmitting the combined broadcast.

30. The method of claim 28 including receiving web broadcast content from a content provider, combining the web broadcast content with television programming at a broadcast encoder and inserting said first marker at the broadcast encoder.

31. The method of claim 26 including invoking a method which obtains current transmission details using said handle, said transmission details current as of the time said method is invoked.

32. The method of claim 31 including providing a second marker and associating said second marker with a second handle.

33. The method of claim 32 including calling a method which provides transmission details and terminates said handle.

34. The method of claim 32 including allowing said first and second markers to be accessed separately using separate handles so that transmission details associated with different portions of a transmission can be obtained.

35. The method of claim 26 including providing a log-in server, reporting a transmission to said log-in server and allowing a third party to access said log-in server to receive transmission reporting.

36. A method for tracking video transmissions comprising:  
setting a first marker in a transmission having video content;  
invoking a first method to provide a handle to said first marker; and  
in response to providing said handle, tracking the transmission from the time the handle to the first marker is provided until a time a second method other than said first method is invoked, said second method to obtain current transmission details while said tracking from said first marker continues without interruption, said second method invokable at any time to provide details relative to said first marker.

37. The method of claim 36 including obtaining current transmission details using said handle, said transmission details current as of the time said second method is invoked.

38. The method of claim 37 including providing a second marker and associating said second marker with a second handle.

39. The method of claim 38 including calling a third method other than said first and second methods, said third method to provide transmission details and to terminate the handle.

40. The method of claim 38 including allowing said first and second markers to be accessed separately using separate handles so that transmission details associated with different portions of a transmission can be obtained.

41. The method of claim 36 including receiving a web content broadcast with the first marker inserted within the broadcast, combining the web content broadcast with a television broadcast and transmitting the combined broadcast.

42. The method of claim 36 including receiving web broadcast content from a content provider, combining the web broadcast content with television programming at a broadcast encoder and inserting the first marker at the broadcast encoder.

43. The method of claim 36 including providing a log-in server, reporting a transmission to said log-in server and allowing a third party to access said log-in server to receive transmission reporting.

## **EVIDENCE APPENDIX**

None.

**RELATED PROCEEDINGS APPENDIX**

None.